IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4173 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MOHMADBHAI YAKUBBHAI PATADIA

Appearance:

1. Special Civil Application No. 4173 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

MR JASWANT K SHAH for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/02/2002

ORAL JUDGEMENT

1. By way of present petition, the Gujarat State Road Transport Corporation (for short "GSRTC") has challenged the judgement and award dated 22.9.2000 passed

by the Labour Court, Ahmedabad. The learned Judge has exercised the discretion under Section 11A of the Industrial Disputes Act. The punishment of 'dismissal' is quashed and respondent workman is allowed to retire. It is not clarified that as to from which date the respondent workman be treated to have retired. The respondent workman was dismissed from the service with effect from 27.8.1993.

2. Mr. H.C.Raval learned advocate appearing for the petitioner pointed out para.6 of the judgement and award of the learned Judge, wherein the learned Judge has discussed in detail all aspects of the case. Except on the ground that on 31.4.1997 the respondent workman has reached the age of superannuation no other ground is mentioned for exercising the discretion under Section 11A of the Industrial Disputes Act. Mr. Raval learned advocate for the petitioner further submits that in fact, the Labour Court having recorded that the respondent workman is having the past record from which it can be concluded that, 'he is having tendency of committing similar types of financial irregularities', the learned Judge ought not to have exercised the discretion and ought not to have interfered with the order of punishment imposed by the petitioner - Corporation.

3. Mr. Jaswant K. Shah learned advocate appearing for the respondent workman submits that having reached to the age of superannuation is an important aspect and the same has rightly weighed with the learned Judge of the Labour Court. Mr. Shah submitted that this very aspect had weighed with the Hon'ble the Apex Court in the case of Karnataka State Road Transport Corporation Vs. B.S.Hullikatti reported in AIR 2001 SC 930, wherein the Hon'ble Apex Court in para.7 has observed as under :-

> Para.7
> In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any backwages at all but he would be entitled to the retiral benefits.

Mr. Shah requested that the view be taken by following the decision of the Hon'ble the Apex Court.

4. Taking the same view in the matter, the judgement and award of the Labour Court is modified. The

respondent workman be treated to have retired from service from the date of dismissal i.e. 27.8.1993. However, he shall not be entitled for any backwages for the period from 27.8.1993 to 31.4.1997 and he shall get only 75% of his retiral benefits. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi,J.)

(vipul)